



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 355 of 2014

Surit Ram S/o Fagual Aged About 48 Years R/o Village Hatod, PS And Tehsil Kasdol, Distt Baloda Bazar (Old District Raipur), CG.

--- **Appellant(s)**

versus

1. State of Chhattisgarh Through Its Secretary, Govt. Of Chhattisgarh, Department Of Water Resource, DKS Bhawan, Mantralaya, Now Present Address Mahanadi Bhawan, PS Rakhi, New Raipur, Dist Raipur, Chhattisgarh
2. State Industrial Court, Through Its Registrar, Raipur, District : Raipur, Chhattisgarh

--- **Respondent(s)**

WA No. 317 of 2014

Ramkhilawan Sahu S/o Ganga Prasad Sahu Aged About 50 Years old R/o Village Kharche, PO Kasdol, Distt Raipur, Chhattisgarh

---**Appellant(s)**

Versus

1. Executive Engineer Construction Division Water Resources Deptt. Kasdol, Distt Raipur, Chhattisgarh
2. Sub Divisional Officer, Ballar Canal Sub Division Kasdol, Tah Kasdol, Distt Raipur, Chhattisgarh

--- **Respondent(s)**

WA No. 378 of 2014

Janak Ram S/o Tir Singh Patel (wrongly mentioned as Vir Singh Patel in Writ Petition) Aged About 48 Years R/o Village Hatod, PS And PO Kasdol, Distt Raipur, Now Distt Baloda Bazar, Chhattisgarh

---**Appellant(s)**

Versus

1. State Of Chhattisgarh Through The Secretary, Water Resources Deptt., Mahanadi Bhawan, PS Rakhi, New Raipur, Dist Raipur, Chhattisgarh
2. Superintendent Engineer Water Resources Deptt. Raipur, Dist Raipur, Chhattisgarh
3. Executive Engineer Water Resources Division, Baloda Bazar, Distt Raipur, Chhattisgarh
4. Sub Divisional Officer, Water Resources Sub Division, Kasdol, Tehsil Kasdol, Dist Raipur, Chhattisgarh
5. Presiding Officer, Industrial Court, Raipur, Dist Raipur, Chhattisgarh
6. Presiding Officer, Labour Court, Raipur, Dist Raipur, Chhattisgarh

--- **Respondent(s)**

WA No. 390 of 2014

Surendra Kumar Sahu S/o Salikram Sahu Aged About 37 Years R/o Vill. And Post Kankera Tah. And Dist. Mahasamund, Chhattisgarh

---**Appellant(s)**

Versus

1. State Of Chhattisgarh Through Senior Agriculture Development Officer, Block Mahasamund Tah. And Dist. Mahasamund, Chhattisgarh
2. Deputy Director Agriculture (Agriculture Department) Mahasamund, District : Mahasamund, Chhattisgarh
3. Presiding Officer Labour Court Raipur ,District : Raipur, Chhattisgarh

--- **Respondent(s)**

WA No. 392 of 2014

Tokram Rajwade (Died) Through Legal Heirs

Smt. Geeta Bai Rajwade W/o Late Shri Tokram Rajwade Aged About 39 Years R/o Village Kanki Block Kartala, Police Station Kartala, District Korba, Chhattisgarh.

---**Appellant(s)**

Versus

1. State Of Chhattisgarh Through Its Executive Engineer Hasdeo Barrage Water Resource Rampur, Chhattisgarh
2. Sub Divisional Officer Hasdeo R.B.C. Water Resource Sub Division No. 1, Pantora Dist. Janjgir-Champa, Chhattisgarh

3. State Of Chhattisgarh Through Its Secretary Department Of Law And Legislature Mahandi Bhawan New Raipur, District : Raipur, Chhattisgarh
4. Secretary Department Of General Administration Mantralaya Mahandi Bhawan New Raipur, District : Raipur, Chhattisgarh

--- Respondent(s)

For Appellant(s)	: Mr. Vinod Deshmukh, Mr. Ritesh Giri, Mr. Harshal Chouhan, Mr. Keshav Dewangan, Advocates.
For Respondent(s) / State	: Mr. Y.S.Thakur, Additional Advocate General
Date of Hearing	: 01/08/2025
Date of Order	: 29/08/2025

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Naresh Kumar Chandravanshi, Judge

Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. Order

Per Ramesh Sinha, Chief Justice

1. Heard Mr. Vinod Deshmukh, Mr. Ritesh Giri, Mr. Harshal Chouhan, Mr. Keshav Dewangan, learned counsel for the respective appellants as well as Mr. Y.S.Thakur, Additional Advocate General for the State/ respondents.
2. Since the facts in all these cases are almost identical, they are being considered together.
3. WA No. 355 of 2014 is taken as the lead case.
4. The facts, in brief, as projected in this appeal is that the appellant was initially appointed as a Labour on 01.03.1985 and continuously worked till 01.08.1994 without any break of service. All of sudden on 01.08.1994 the services of the appellant was discontinued and terminated by the Sub Divisional Officer, Balar Canal, Sub Division, Kasadol by oral order

without assigning any reason. The services the other similarly situated employees namely Tularam, Badku, Dhaniram,, Khelaf, Bharat, Ramnarayan, Harishankar, Dukalu, Dhaniram, Shyamu, Kushu Ram, Ramnarayan, Harishanker were terminated by the oral order in the year 1994 on the basis of a Circular issued by the erstwhile Government of Madhya Pradesh in year 1994. Against the termination/discontinuation of service of the by oral order dated 01.08.1994, the appellant approached before the Labour Court, Raipur by moving an application under section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (*for short, the MPIR Act*) in the year 1995 and on receiving the said application of the appellant, the learned Labour Court registered the case being No. 197/MPIR Act/1995. Notice was issued to the concerned Department upon which the Department filed its return. The learned Labour Court, Raipur without appreciation of evidence and materials, rejected the said application of the appellant vide order dated 26.06.2003.

5. The said order dated 26.06.2003 was challenged by the appellant in Case No. 173/CGIR Act/1995 before the learned Industrial Court and the Industrial Court also after going through the records and evidence of the Court below and held that the learned Labour Court did not properly appreciate the evidence and documents at the time of considering the case of appellant and also held that the appellant has completed more than 240 days in preceding 12 months and the Department did not comply with the provisions Section 25 (F) of the Industrial Dispute Act prior to retrenchment of the answering respondent. In pursuance of the award passed by the Industrial Court, the appellant was reinstated in the service *w.e.f.* 10.07.2007 and also prepared the service book of the appellant since then he is continuously working. The employees/daily

wagers who were terminated along with the appellant by oral order dated 01.08.1994 namely Tularam, Badku, Dhaniram,, Khelaf, Bharat, Ramnarayan, Harishankar, Dukalu, Dhaniram, Shyamu Kushu Ram, Ramnarayan, Harishanker and other employee, had also approached before the Labour Court Raipur under the C.G./M.P.I.R. Act and Labour Court held that order of retrenchment /termination was illegal and they were reinstated in the service in pursuance of the order passed by the Labour Court. In between, the State Government issued a Notification/Circular dated 05.03.2008 whereby it is decided that the daily wages employee who were working prior to 31st December 1988 and 1997, would be entitled for regularization on their respective posts.

6. Only due to pendency of the instant writ petition filed by the petitioner / Department, the State Government has not considered the case of the appellant as per Circular dated 05.03.2008 for his regularization. The State Government had also challenged the orders passed by the Labour Court in favors of the others similarly employees who's were terminated alongwith the respondent No.1/employee. Finally, the writ petition of the State Government came up for hearing and vide order dated 12.08.2014 the learned Single Judge without proper consideration of the findings recorded by the learned Industrial Court on the basis of materials available, has interfered with the findings recorded by the Industrial Court and modified order of reinstatement of appellant and allowed the writ petition filed by the State and held that the appellant/employee was entitled to a sum of Rs. 1,00,000/- as compensation, which is under challenge in this appeal alongwith the batch of writ appeals.
7. This batch of writ appeals was being heard by a learned Division Bench of this Court, however, these appeals have come up before this Full

Bench in view of the order dated 22.12.2016 passed by the learned Division Bench which has referred the following questions for consideration:

“(i) What is the extent of the power of judicial review under Article 226 and 227 of the Constitution of India and whether the writ court can interfere in the relief granted by the Labour Court/Industrial Tribunal and if so under what circumstances?”

“(ii) Whether in a case where retrenchment of the workmen is held to be violative of provisions of the Industrial Disputes Act, the workmen is automatically entitled to be reinstated or can compensation be granted in place of reinstatement?”

“(iii) What are the parameters for deciding in which cases reinstatement should be granted and in which cases the relief of compensation should be granted?”

“(iv) What are the parameters to decide in which cases the workmen be granted full back-wages or partial back-wages and in which cases the workmen should be denied benefit of back-wages?”

“(v) What is the effect of delay on the part of the workman in approaching the appropriate authority for challenging his order of termination?”

8. It would be beneficial to briefly take note of the facts and circumstances which led to referring the above questions before this Bench.
9. In this batch of writ appeals, the main question which arose for consideration was as to what relief the workmen are entitled to when their termination from services is held to be bad. Should this result in automatically reinstatement of the workmen with full back-wages or partial back- wages or with no back-wages or should the workmen be

compensated by payment of monetary compensation and denied the relief of reinstatement and back-wages.

10. Another question that arises is what is the power of judicial review vis-a-vis the relief granted by the Labour Court. This question arises in a large number of cases. There are various judgments of the Apex Court on this aspect of the matter. The Apex Court has laid down various principles as to in which cases reinstatement should be given, in which cases back-wages should be granted and in which cases the order of reinstatement and payment of back-wages is not justified and compensation is the adequate relief available to the workmen.
11. It was observed by the learned Division Bench that there could be no hard and fast formula which can be laid down and each case has to be decided on its own merits. However, as the then Chief Justice had observed that there were absolutely conflicting judgments being delivered by the different Single Benches of this Court, the matter was taken up in the Division Bench.
12. Before the learned Division Bench, two judgments were cited, one on behalf of the claimants being Writ Appeal No. 568 of 2015 in which the benefit of reinstatement and order of reinstatement passed by the Labour Court was confirmed. There is no detailed discussion with regard to various judgments of the Apex Court. The other case cited was Writ Appeal No. 50 of 2011. Though in this case, there was some discussion with regard to the judgments of the Apex Court, the learned Division Bench was of the view that even in this case, the matter has not been discussed threadbare and various judgments of the Apex Court were not considered. The matter did not end there. Even after the aforesaid judgments delivered, there were now fresh judgments of the Apex Court

in this regard. Therefore, it was felt that these issues which arise day in and day out before this Court require to be considered by a Full Bench and as such, the questions as above, were referred to this Bench.

13. Mr. Vinod Deshmukh, learned counsel appearing for the appellants / employees submit that the appellants are entitled to be reinstated in service as they have served the respondent/Department for a considerable long time and there are catena of decisions which supports the contentions of the appellants.
14. With respect to the first question (i), Mr. Deshmukh places reliance on the decision of the Supreme Court in ***Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.*** {(2014) 2 SCC (L&S) 437}, ***Devinder Singh v. Municipal Council, Sanaur*** {(2011) 6 SCC 584}, ***Harjinder Singh v. Punjab State Warehousing Corporation*** {(2010) 3 SCC 192}, ***Anoop Sharma v. Executive Engineer, Public Health Division No. 1 Panipat, (Haryana)*** {(2010) 2 SCC (L&S) 63}, ***Krishna Singh v. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)*** {(2010) 1 SCC (L&S) 890}, ***Jasmer Singh v. State of Haryana & Another*** {(2015) 2 SCC (L&S) 46}.
15. With respect to the issue as to whether the relief of reinstatement in service can be granted in every case where the Labour Court or the Industrial Court has held that the termination of the employee is illegal, and further when non-compliance of Section 25F of the ID Act, 1947 entails reinstatement in service, Mr. Deshmukh places reliance on the decisions of the Supreme Court in ***Ramesh Kumar v. State of Haryana*** {(2010) 1 SCC (L&S) 420}, ***Sudarshan Rajpoot v. Uttar Pradesh State Road Transport Corporation*** {(2015) 1 SCC (L&S) 451}, ***Mackinnon Mackenzie & Co. Ltd. v. Mackinnon Employees***

Union {(2015) 2 SCC (L&S) 66}, **Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar** {(2015) 2 SCC (L&S) 776}, **Ajaypal Singh v. Haryana Warehousing Corporation** {(2015) 2 SCC (L&S) 279}, **Gauri Shanker v. State of Rajasthan** {2015 (145) FLR 671}, **Bharat Sanchar Nigam Ltd. v. Man Singh** {(2012) 1 SCC 558}, **Jagbir Singh v. Haryana State Agriculture Marketing Board & Another** {(2009) 15 SCC 327}. **Assistant Engineer, Rajasthan Development Corporation & Another v. Gitam Singh** {(2013) 5 SCC 136}, **Assistant Engineer, Rajasthan State Agriculture Marketing Board v. Mohan Lal** {(2013) 14 SCC 543}, **Maharashtra State Co-operative Marketing Federation Ltd. v. Suresh** {(2015) 4 SCC 542}, **Bhavnagar Municipal Corporation & Others v. Jadeja Govubha Chhanubha & Another** {(2014) 16 SCC 130}, **Vice Chancellor, Lucknow University, Lucknow Uttar Pradesh v. Akhilesh Kumar Khare & Another** {(2016) 1 SCC 521}, **Haryana Urban Development Authority v. Om Pal** {(2007) 2 SCC (L&S) 255}, **Deputy Executive Engineer v. Kuberbhai Kanjibhai** {(2019) 4 SCC 307}, **Jayantibhai Raojibhai Patel v. Municipal Council , Narkhed & Others** {(2019) 17 SCC 184}, **K.V.Anil Mithra & Another v. Sree Sankaracharya University of Sanskrit and Another** {Civil Appeal No. 9067/2014, decided on 27.10.2021}, **Ranbir Singh v. Executive Engineer, PWD** {Civil Appeal No. 4483/2010, decided on 02.09.2021}, **Divisional Controller, Maharashtra State Road Transport Corporation v. Kalawati Pandurang Fulzele** {Civil Appeal No. 463/2022, decided on 31.01.2022}, **Madhya Bharat Gramin Bank v. Panchamlal Yadav** {Civil Appeal No. 9792/2010},

16. With respect to stale claims/limitation/delay and laches, Mr. Deshmukh places reliance on the decisions of the Supreme Court in **Prabhakar v.**

Joint Director, Sericulture Department & Another {(2015) 15 SCC 1}, ***Ajaib Singh v. Sirhind Corporation Marketing cum Processing Service Society Ltd.*** {(1999) 6 SCC 82}, ***Balbir Singh v. Punjab Roadways*** {(2001) 1 SCC 133}, ***Management of Sudamdih Colliery of M/s. Bharat Coking Coal Ltd. v. Workmen, Rashtriya Colliery Mazdoor Sangh*** {(2006) 2 SCC 329}, ***U.P. State Road Transport Corporation v. Mansingh*** {(2006) 7 SCC 752}, ***Director, Food & Supply Punjab v. Gurmit Singh*** {(2007) 5 SCC 727}, ***Krishi Utpadan Mandi Samiti v. Pahal Singh*** {(2007) 12 SCC 193}, ***Haryana Land Reclamation Development Corporation Ltd. v. Nirmal Kumar*** {(2008) 2 SCC 366}, ***Chief Engineer Ranjit Sagar Dam v. Sham Lal*** {(2006) SCC (L&S) 1617 }, ***Raghubir Singh v. Haryana Roadways*** {(2015) 1 SCC L&S 23}, ***Assistant Engineer, CAD, Kota v. Dhan Kunwar*** {(2006) 13 SCC 299}.

17. With respect to the parameters to decide as to in which case a workman be granted full / partial backwages and in which case he should be denied the benefit of back-wages, Mr. Deshmukh places reliance on the decision of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) & Others***, {(2013) 10 SCC 324} and ***Jayantibhai Raojibhai Patel*** {supra},
18. On the other hand, Mr. Y.S.Thakur, learned Additional Advocate General appearing for the writ petitioner/State submits that the reference made by the learned Division Bench stands answered by various judgments of the Hon'ble Apex, however, he fairly admits that there are judgments, both in favour and against the writ petitioner/State. He places reliance on the decision of the Supreme Court in ***Madhya Bharat Gramin Bank v. Panchamlal Yadav*** {(2021) 20 SCC 633}, ***Hari Nandan Prasad &***

Another v. Employer I/R to Management of Food Corporation of India & Another {(2014) 7 SCC 190}, ***Bharat Sanchar Nigam Ltd. v. Bhurumal*** {(2014) 7 SCC 177}, ***Gitam Singh*** (supra), ***Bharat Sanchar Nigam Ltd.*** (supra) ***Incharge Officer & Another v. Shankar Shetty*** {(2010) 9 SCC 126}, ***Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal & Others*** {(2010) 6 SCC 773} and ***Jagbir Singh*** (supra).

19. With respect to the first question referred by the learned Division Bench, the extent of judicial review under Articles 226 of the Constitution of India, a writ Court has a very wide power. It can issue writs for enforcement of fundamental rights as well as for any other purpose i.e., legal rights. The jurisdiction is discretionary, equitable and extraordinary. However, it is not an appellate jurisdiction. The High Court does not re-appreciate evidence as if sitting in appeal. So far as Article 227 of the Constitution is concerned, it is the power of superintendence. The High Court has power of superintendence over all learned trial Courts / Tribunals. This includes keeping Tribunals within the bounds of their authority, ensuring they do not act perversely or illegally. It is not meant to correct every error of fact or law, but only such errors that go to jurisdiction, perversity, or miscarriage of justice. The Labour Courts and Industrial Tribunals are specialized fact-finding and adjudicatory bodies under the Industrial Disputes Act, 1947 (*for short, the ID Act*). Their awards are generally final on facts. The High Court, in writ jurisdiction, can interfere only in limited circumstances i.e. jurisdictional errors, error apparent of the face of record, perversity or case of no evidence, violation of natural justice, arbitrariness.

20. The Hon'ble Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan*** {AIR 1964 SC 477}, ***Surya Dev Rai v. Ram Chander Rai*** {(2003) 6 SCC 675}, and ***Harjinder Singh v. Punjab State Warehousing Corporation*** {(2010) 3 SCC 192} has consistently held that while the High Court has wide powers under Article 226 and supervisory jurisdiction under Article 227, but such powers are to be exercised with great circumspection and only to ensure that the Labour Courts / Tribunals act within the bounds of their authority.

21. With respect to second question referred to by the learned Division Bench, the relief which the Courts used to grant traditionally was reinstatement with back-wages. Earlier, the settled principle was that once retrenchment/termination was held to be illegal or violative of Section 25F of the ID Act, the normal rule was reinstatement with continuity of service and back wages. This was based on the idea that retrenchment without compliance of statutory safeguards is *void ab initio*. However, with passage of time, there has been a shift in judicial approach. Over time, the Hon'ble Supreme Court has nuanced the rule, recognising that automatic reinstatement is not always proper, especially when: (i) the workman was a casual/temporary employee, (ii) the industry/employer has reorganised or downsized (iii) long delay has occurred in raising the dispute or (iv) industrial peace or practical feasibility is at stake. In ***Hindustan Tin Works v. Employees*** {(1979) 2 SCC 80}, back-wages was considered a normal rule, but subject to equities. In ***Surendra Kumar Verma v. Central Govt. Industrial Tribunal*** {(1980) 4 SCC 443} it was observed that if retrenchment is in violation of Section 25F of the ID Act, reinstatement normally follows. In ***Haryana State Electronics Dev. Corpn. Ltd. v. Mamni*** {(2006) 9

SCC 434} it has been held that reinstatement is not automatic; and compensation can be awarded depending on facts.

22. In ***Jagbir Singh v. Haryana State Agriculture Mktg. Board*** {(2009) 15 SCC 327}, the Supreme Court held that relief of reinstatement with full back wages is not automatic. Instead, compensation may be adequate relief, particularly where the workman was employed for a short term or on daily wages. In ***Bhurumal*** (supra), compensation instead of reinstatement was awarded; and automatic reinstatement was held to be no longer the rule. The current legal position is that no automatic reinstatement can be awarded even if retrenchment is held to be illegal. The relief depends on factors such as (i) nature of employment (permanent / daily wager) (ii) length of service (iii) delay in raising dispute, (iv) whether reinstatement is practicable or equitable.
23. Compensation in lieu of reinstatement is increasingly granted, especially where reinstatement is impractical. A permanent / regular employee with long service is likely to get reinstatement, of course, subject to equities and on the contrary, a daily wager/ short term workers or where claims are raised belatedly, are likely to get monetary compensation instead of reinstatement. As such, it can be concluded that when retrenchment is held violative of the ID Act, reinstatement in service is not automatic. The Court/Tribunal has discretion, based on facts and equities, to award compensation instead of reinstatement, and this has become the prevailing trend of the Hon'ble Apex Court in recent years.
24. So far as the third question is concerned, the nature of employment is one of the main factor in deciding whether to grant reinstatement or compensation. In case the nature of employment is permanent / regular, reinstatement is the normal rule whereas, in case of daily wager /

casual / temporary / contractual worker, compensation is usually granted instead of reinstatement {See: **Jagbir Singh** (supra)}. Another factor that has to be borne in mind is the length of service. In case of long, continuous service (e.g., 10–15 years), reinstatement with continuity may be justified, whereas in case of short service or brief engagement, compensation should be awarded, as reinstatement may be inequitable. Delay in raising the dispute is also an important factor to be considered. In case of prompt challenge, reinstatement is more likely to be granted and on the contrary but if there is long unexplained delay, reinstatement may be denied and compensation may be granted.

25. The conduct of the workman is also equally important. If the conduct of the workman is blameless, reinstatement may be favoured and in case of misconduct or indiscipline proven, but there are technical defects in termination, compensation may be awarded instead of reinstatement. Feasibility of reinstatement is also required to be considered. If the industry/establishment has closed down, reorganized, or the post has ceased, reinstatement may not be feasible and award of compensation would be justified. Employer's size and position also matters. Large Establishments where reinstatement would not cause any disturbance in efficiency, reinstatement may be ordered. Small Industry/Employer, where reinstatement would cause disproportionate hardships, compensation is preferable. The Court has also to maintain equities and justice. Courts weigh economic hardship, passage of time, industrial peace, and dignity of the workman. Relief can be moulded accordingly {See: **Bhurumal** (supra)}. The earlier judicial trend was automatic reinstatement with back wages {See: **Surendra Kumar Verma** (supra)} whereas the present trend is that reinstatement is not automatic. Compensation is granted in many cases depending on facts of the

particular case. Earlier, reinstatement with full back wages was the natural consequence of illegal retrenchment. But the Supreme Court, in **Jagbir Singh** (supra) observed that this principle has undergone a paradigm shift. In **Jagbir Singh** (supra), the workman had worked as a daily wager for short period (about 2 years). He raised the dispute after several years. The Supreme Court awarded lump-sum compensation of Rs. 50,000 in place of reinstatement.

26. The factors/circumstances can be summarized as under:

Factor	Reinstatement	Compensation
Nature of employment	Permanent/regular	Daily wager/ casual/ temporary
Length of service	Long, continuous	Short or sporadic
Delay	Prompt challenge	Long, unexplained delay
Feasibility	Employer functional, post available	Establishment closed / post abolished
Conduct	Blameless	Misconduct / indiscipline
Equity	No hardship to employer	Reinstatement impractical / inequitable

27. As such, it can be concluded that reinstatement is not automatic. Courts/ Tribunals consider nature of employment, length of service, delay, conduct of workman, feasibility, and balance of equities. Where reinstatement is impracticable or inequitable, compensation is granted instead.

28. With regard to question No. (iv), as discussed above, earlier, once termination / retrenchment is found illegal and reinstatement ordered, the normal rule was full back wages. This was on the reasoning that the workman, being illegally deprived of work, is entitled to full wages for the period. However, there has been a shift in the aforesaid approach and now it is not being considered to be automatic. In recent years, the Hon'ble Apex Court has clarified that grant of full back wages is not

automatic and depends of facts, equities and conduct and the relief must balance the interests of both employer and employee. Full back-wages may be granted when it is a case of Illegal / unjustified termination of a permanent or long-serving workman, the workman was not gainfully employed during the period of termination, the challenge made to the illegal termination was prompt and without delay, and further no misconduct is attributable to the workman {See: **Deepali Gundu Surwase** (*supra*)}. Partial back-wages can be awarded when there is some delay in raising the dispute, the tenure of service of the workman was short, existence of any intervening circumstances such as closure of Unit, financial hardship of employer and the possibility of gainful employment, even if not conclusively proved.

29. Back-wages may be denied in case where there is a long unexplained delay in raising the dispute where doctrine of laches would come into play, workman was gainfully employed elsewhere during the period (burden on employer to prove, but once prima facie shown, burden shifts to workman), the termination of the workman was not mala fide but due to bona fide reorganization/retrenchment, though legally defective and in case there is misconduct on the part of the workman, even if the termination order is technically invalid. {See: **U.P. State Brassware Corpn. v. Uday Narain Pandey**, (2006) 1 SCC 479}. The aforesaid discussion may be summarised as under:

Relief	Parameters
Full Back Wages	Illegal termination + permanent/long service + no misconduct + prompt challenge + no gainful employment
Partial Back Wages	Delay in dispute + short tenure + possible gainful employment + financial hardship of employer
No Back Wages	Long unexplained delay + gainful

Relief	Parameters
	employment elsewhere + misconduct by workman + bona fide but technically defective termination

30. So far as the last question referred is concerned, firstly, it has to be understood as to what would be the effect of delay in challenging termination by workman. Admittedly, there is no statutory limitation under the ID Act, 1947. The said Act does not prescribe any limitation period for raising an industrial dispute or seeking a reference by the Government under Section 10. Hence, technically, a dispute can be raised even after a long delay. However, the principles of delay and laches could be applied. Even in absence of statutory limitation, courts apply the equitable doctrine of delay and laches. Long unexplained delay may weigh against the workman, especially if it causes prejudice to the employer (e.g., records lost, establishment closed, replacement of worker). In **Nedungadi Bank Ltd. v. K.P. Madhavankutty** {(2000) 2 SCC 455}, the Supreme Court has held that though no limitation is prescribed, disputes must be raised within a reasonable time. A stale claim should not be entertained. In **Assistant Engineer, CAD, Kota v. Dhan Kunwar** {(2006) SCC (L&S) 1142}, it was observed that delay of 7 years in seeking reference was fatal. In **Ajaib Singh v. Sirhind Coop. Marketing Society Ltd.** {(1999) 6 SCC 82}, the Apex Court observed that while there is no limitation, relief can be moulded considering delay; reinstatement after a long period may be inequitable and compensation may be substituted.
31. Delay is not a jurisdictional bar; the dispute can still be referred. However, relief may be denied or modified, reinstatement may be refused and instead a lump-sum compensation may be awarded, back wages may be restricted or denied and the underlying principle behind

the same is that a Court is expected to balance the equities, on the one hand, the workman should not suffer injustice merely because of lack of limitation and *on the other, the employer* should not face hardship of reinstating someone after decades when industrial peace and records have moved on. Delay by the workman in challenging termination does not bar the dispute under the ID Act, but it seriously affects the relief. A stale claim may result in denial of reinstatement and grant of compensation only.

32. What can be culled out from the above discussion is that no straitjacket formula can be laid with respect to the questions referred and the same cannot be answered settling the issues once for all, and the questions, if raised in any particular case, has to be dealt with keeping in view the over all facts situation of that particular case.
33. The reference made by the learned Division Bench stands answered accordingly.
34. Registry is directed to list these appeals before the Bench having the Roster to decide the same on merits.

Sd/- (Ravindra Kumar Agrawal)	Sd/- (Naresh Kumar Chandravanshi)	Sd/- (Ramesh Sinha)
JUDGE	JUDGE	CHIEF JUSTICE

Amit

